

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HOLLAND HARDAWAY,

Petitioner,

v.

CASE NO. 01-CV-70230-DT
HONORABLE GEORGE CARAM STEEH

KENNY ROBINSON,

Respondent.

_____ /

ORDER CONDITIONALLY GRANTING THE WRIT OF HABEAS CORPUS

This matter is pending before the Court on remand from the United States Court of Appeals for the Sixth Circuit. On January 3, 2008, the Court denied petitioner Holland Hardaway's application for the writ of habeas corpus under 28 U.S.C. § 2254. One of the issues was whether petitioner's first appellate attorney was ineffective for failing to file a timely appellate brief. The Court determined that appellate counsel's performance was deficient, but that the deficient performance did not prejudice petitioner.

On appeal from the Court's decision, petitioner argued that (1) the trial judge gave the jury a coercive *Allen*¹ instruction and (2) his appellate attorney was ineffective. The Sixth Circuit Court of Appeals found no merit in petitioner's first claim, but determined that petitioner was entitled to relief on his second claim. The Court of Appeals stated that appellate counsel's failure to file a timely brief deprived petitioner of

¹ See *Allen v. United States*, 164 U.S. 492, 501-02 (1896).

a direct appeal, which was not cured by the ability to appeal from later state collateral proceedings. The Court of Appeals reversed this Court's denial of habeas relief and remanded the case with instructions to issue a conditional writ directing the state to afford petitioner a direct appeal.

In light of the Court of Appeals decision, the Court hereby **GRANTS** a conditional writ of habeas corpus on petitioner's claim that his first appellate attorney was ineffective. The State is **ORDERED** to release petitioner unless it grants him an appeal of right within **sixty (60) days** of the date of this order.

Dated: June 23, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 23, 2011, by electronic and/or ordinary mail and also to Holland Hardaway at Mound Correctional Facility, 17601 Mound Road, Detroit, MI 48212.

S/Josephine Chaffee
Deputy Clerk